

ORDINANCE NO. 2019-1331

**AN ORDINANCE AMENDING CHAPTER 50 OF THE
CODE OF ORDINANCES FOR THE CITY OF ORANGE BEACH, ALABAMA
TO ADD A NEW ARTICLE XII TO IMPOSE ADDITIONAL LICENSING REQUIREMENTS
ON PERSONS ENGAGED IN THE BUSINESS OF SELLING
INDUSTRIAL HEMP OR HEMP EXTRACTS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:

1. That Chapter 50 of the Code of Ordinances for the City of Orange Beach is hereby amended to add a new Article XII as follows:

Sec. 50-___. – Findings.

- (a) The City of Orange Beach is a resort island community renowned for its beaches, waterways and other natural resources. Tourism is a large part of the local economy.
- (b) Orange Beach has a permanent population of approximately 6,000, and on any given weekend it may host more than 40,000 visitors. On summer weekends, the number of visitors swells to 100,000 or more. Orange Beach strives to create an environment that is family-friendly, safe and fun.
- (c) The federal government and the State of Alabama have approved the cultivation of industrial hemp (*Cannabis sativa L.*). According to a Public Notice issued by the Attorney General of Alabama dated December 12, 2018, “CBD derived from industrial hemp, with a THC concentration of not more than .3% on a dry weight basis, can be legally produced, sold, and possessed in the State of Alabama.”
- (d) As noted by the Attorney General, nothing in the laws legalizing industrial hemp prevents states from adopting laws that restrict or regulate its production; moreover, prescription drugs and other consumables containing CBD will continue to be regulated by the U.S. Food and Drug Administration.
- (e) Orange Beach is an Alabama Class 8 municipality that has been vested with a portion of the state’s sovereign power to protect the public health, safety and welfare. *Ala. Code* §11-45-1. The city is specifically authorized to adopt regulations for persons conducting business within the city and its police jurisdiction. *Ala. Code* §11-51-90 and -91.
- (f) Under Alabama law and the ordinances of the city, “tetrahydrocannabinols”, is a controlled substance, except for tetrahydrocannabinols (THC) in industrial hemp, which is defined by *Ala. Code* §2-8-381, are defined as “[t]he plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, cultivated or possessed by a licensed grower or otherwise in accordance with the state’s USDA-approved regulatory plan, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”
- (g) To date the state has not promulgated rules relating to the sales of industrial hemp or products derived therefrom. Absent laboratory analysis, however, industrial hemp is virtually indistinguishable from marihuana and therefore creates enforcement problems for law officers.
- (h) Moreover, the proliferation of products containing the cannabinoid derived from industrial hemp, commonly referred to as CBD is marketed for therapeutic or medical use despite the lack of clinical trials that have assessed the safety and effectiveness of these substances for the treatment

of any disease or condition.

- (i) Despite the lack of scientific data on the efficacy of CBD oils, there exist a wide variety of products, including oils, food products, beverages, topical creams, and dried flower buds that are marketed through stand-alone CBD stores, health food stores and other retail establishments, as well as online vendors.
- (j) In some cities, retailers that promote CBD oil also sell items that may be used or are intended for use with controlled substances such as marijuana, including: rolling papers, cigars used to fill with marihuana (a.k.a. "blunts"), pipes, bongs, roach clips and e-cigarettes, which give the overall impression that the retailer is selling recreational drugs, rather than CBD extracts.
- (k) In order to protect public health, safety and welfare the council finds it necessary to impose certain minimum requirements on businesses who sell such industrial hemp products within the city and its police jurisdiction.

Sec. 50-___. – Short Title/Jurisdiction.

This Article may be known as the Industrial Hemp Licensing Rules, and shall be administered by the Director of Finance and the Police Chief. It shall apply to all businesses within the corporate limits or the police jurisdiction.

Sec. 50-___. – Definitions.

CBD is a non-intoxicating cannabinoid derived from industrial hemp.

Drug paraphernalia is any item that may be used, or is intended for use, with controlled substances as such as marihuana, including rolling papers, cigars used to fill with marihuana (a.k.a. "blunts"), pipes, bongs, roach clips and e-cigarettes which give the overall impression that the retailer is selling recreational drugs rather than hemp extracts.

Food or Beverage means any product processed, packaged, or distributed that is intended for human consumption, including fresh prepared foods as well as packaged food, alcoholic and nonalcoholic beverages.

Hemp means the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Hemp extract means a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain other controlled substances and includes CBD.

Independent testing laboratory means a laboratory that:

- (1) Does not have a direct or indirect interest in the entity whose product is being tested;
- (2) Does not have a direct or indirect interest in a facility that cultivates, processes, distributes, dispenses, or sells hemp or hemp extract in the state or in another jurisdiction, or cultivates, processes, distributes, dispenses, or sells marihuana, as defined in *Ala. Code* §20-2-2; and
- (3) Is accredited by a third-party accrediting body as a competent testing laboratory pursuant to ISO/IEC 17025 of the International Organization for Standardization.

Sec. 50-___. – Licensing Requirements.

- (a) It shall be unlawful for any person to cultivate, sell or distribute hemp or hemp extracts with the city or its police jurisdiction without first obtaining a business license required by this Chapter.

- (b) The annual license fee shall be in accordance with Sec. 50-79 of the City Code, "Rate schedules for the Business License Code of the City of Orange Beach, Alabama."

Sec. 50-__.- Distribution and Sale of Hemp or Hemp Extract.

Hemp or hemp extract may only be distributed and sold within the city and its police jurisdiction if the product:

- (a) Has a certificate of analysis prepared by an independent testing laboratory that states:

- (1) The hemp extract is the product of a batch that has been tested by an independent testing laboratory;
- (2) The batch contained a total delta-9-tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry-weight basis pursuant to the testing of a random sample of the batch; and
- (3) The batch does not contain contaminants unsafe for human consumption.

- (b) Is distributed or sold in packaging that includes:

- (1) A scannable barcode or quick response code linked to the certificate of analysis of the hemp extract by an independent testing laboratory;
- (2) The batch number
- (3) The Internet address of a website where batch information may be obtained;
- (4) The expiration date;
- (5) The number of milligrams of hemp extract; and
- (6) A statement that the product contains a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Sec. 50-__.- Violations.

- (a) It shall be unlawful for any person holding a license issued pursuant to this Article:

- (1) To cultivate hemp within the city or its police jurisdiction without a permit issued by the State of Alabama Department of Agriculture;
- (2) To engage in any false or deceptive marketing of such products as defined by *Ala. Code* §13A-9-41;
- (3) To engage in an unlawful trade practice as defined by *Ala. Code* §8-19-5.
- (4) To represent that hemp or hemp extracts have therapeutic benefits for any medical disease or condition, unless such claim has been approved by the FDA;
- (5) To sell any food or beverage containing hemp or hemp extracts;
- (6) To sell drug paraphernalia or other merchandise, such as T-shirts, souvenirs, flags, and the like, that advertise or display images of marihuana that give the overall impression that the business is selling recreational drugs rather than hemp or hemp extracts; or
- (7) To violate any state or local law, rule or regulation relating to the production, sale, or distribution of industrial hemp or hemp extracts in any form.

Sec. 50-__.- Presumption/Affirmative Defense.

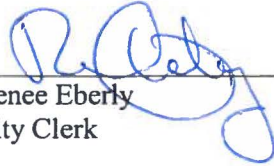
- (a) For purposes of the enforcement of state statutes and municipal ordinances in the city's municipal court, any substance or material determined by testing at the time of its discovery by a law enforcement officer to contain any tetrahydrocannabinol

concentration is presumptively marihuana and a controlled substance.

(b) The person charged in connection with the possession or sale of such substance or material bears the burden of affirmative proof that the substance or material is industrial hemp within the definition of state law or is otherwise possessed or sold subject to another affirmative defense provided by state law.

2. That all ordinances or parts of ordinances in conflict are, to the extent of such conflict, repealed; and
3. That this Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED THIS 3rd DAY OF SEPTEMBER, 2019.



Renee Eberly
City Clerk

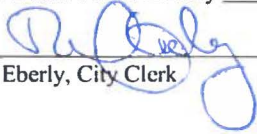
The City Clerk of the City of Orange Beach, Alabama hereby certifies
that the foregoing **ORDINANCE 2019-1331**
was posted on **09/04/2019** in the following three

(3) public places:

Orange Beach City Hall _____

Orange Beach Post Office _____

Orange Beach Public Library _____



Renee Eberly, City Clerk